

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**
FOR: HEALTH CARE FINANCING ADMINISTRATION

1. TRANSMITTAL NUMBER:

01-04

2. STATE:

Texas

3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL
SECURITY ACT (MEDICAID)

4. PROPOSED EFFECTIVE DATE

September 1, 2001

TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:

42 CFR Part 430

7. FEDERAL BUDGET IMPACT: See Attachment

a. FFY 2002 \$ ~~1,462,348~~ 1,188,990b. FFY 2003 \$ ~~4,071,845~~ 1,188,990

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

See Attachment

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (If Applicable):

See Attachment

10. SUBJECT OF AMENDMENT: Amendment No. 589 - This amendment will revise the state-operated ICF/MR rate setting methodology from prospective rates based on each facility's historical cost pattern with adjustments for inflation to interim rates that are uniform statewide by class with annual settlement.

11. GOVERNOR'S REVIEW (Check One):

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL☒ OTHER, AS SPECIFIED:

Sent to Governor's Office this date. Comments, if any, will be forwarded upon receipt

12. SIGNATURE OF STATE AGENCY OFFICIAL:

Linda K. Wertz

13. TYPED NAME:

Linda K. Wertz

14. TITLE:

State Medicaid Director

15. DATE SUBMITTED:

July 10, 2001

16. RETURN TO:

Linda K. Wertz
State Medicaid Director
Health and Human Services Commission
Post Office Box 13247
Austin, Texas 78711

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17. DATE RECEIVED:

AUGUST 14, 2001

18. DATE APPROVED:

OCTOBER 24, 2001

PLAN APPROVED - ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:

SEPTEMBER 1, 2001

20. SIGNATURE OF REGIONAL OFFICIAL:

Calvin G. Cline

21. TYPED NAME:

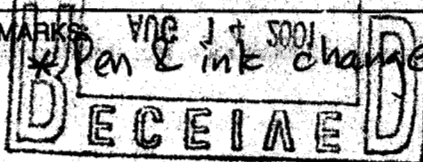
CALVIN G. CLINE

22. TITLE:

ASSOCIATE REGIONAL ADMINISTRATOR
DIV OF MEDICAID AND STATE OPERATIONS

23. REMARKS:

Open & ink change per State's 9/14/01 request.





**DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services**

Calvin G. Cline
Associate Regional Administrator, Medicaid and State Operations

1301 Young Street, Room 827
Dallas, Texas 75202
Phone (214) 767-6301
Fax (214) 767-0270

October 24, 2001

Our reference: SPA-TX-01-04

Ms. Linda K. Wertz, State Medicaid Director
Texas Health and Human Services Commission
Post Office Box 13247
Austin, TX 78711

Dear Ms. Wertz:

We have reviewed the proposed amendment to your Medicaid State plan submitted under transmittal no. (TN) 01-04. Effective September 1, 2001, this amendment replaces facility specific prospective per diem rates for state operated ICF/MRs with interim class per diem rates subject to cost settlement. For purposes of establishing the interim per diems, state operated ICF/MRs will be divided into two classes. One class will consist of providers with 17 beds or more and one class will consist of providers with 16 beds or less.

We conducted our review of your submittal according to the statutory requirements at sections 1902(a)(13)(A) and 1902(a)(30) of the Social Security Act and the implementing federal regulations at 42 CFR 447 Subpart C. We have approved the amendment for incorporation into the official Texas State plan effective on September 1, 2001. We have enclosed a copy of HCFA-179, transmittal no. 01-04, dated October 24, 2001, and the amended plan pages.

If you have any questions, please call Billy Bob Farrell at (214) 767-6449.

Sincerely,

Calvin G. Cline
Associate Regional Administrator
Division of Medicaid and State Operations

Enclosures

cc: Elliot Weisman, CMSO, PCPG
Commerce Clearing House

CORRECTED
Attachment to HCFA – 179 for
Transmittal No. 01-04, Amendment No. 589

Number of the
Plan Section or Attachment

Attachment 4.19-D

Page 1
Page 3
Page 4
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Number of the Superseded
Plan Section or Attachment

Attachment 4.19-D

Page 1 (TN00-08)
Page 3 (TN97-05)
Page 4 (TN97-05)
Page 10 (TN00-08)
Page 11 (TN97.05)
Page 12 (TN00-08)
Page 15 (TN00-08)
Page 16 (TN00-08)
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I. General

The Texas Department of Mental Health and Mental Retardation (TDMHMR) reimburses Texas Medicaid providers for Intermediate Care Facilities for the Mentally Retarded (ICF/MR) services provided to Medicaid recipients. At least annually, Health and Human Services Commission (HHSC) determines prospective uniform reimbursement rates for non-state operated facilities according to the size of facility. At least annually, HHSC determines interim rates for state operated facilities that are uniform statewide by class. Interim rates are set prospectively with an annual settle-up. Classes of state-operated facilities are based upon facility size.

II. Definitions

For the purpose of ICF/MR reimbursement, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

- A. **Cost Reports.** Any cost data or financial information submitted by a provider to HHSC. Cost reports will include all types of cost data requested by HHSC including the following.
1. **Direct Services Cost Report.** Annual report required by HHSC in which cost data related to direct services is submitted by all ICF/MR providers.
 2. **Full Cost Report (state-operated facilities).** Cost data required by HHSC that includes all costs of providing services including direct care costs, administration, facility costs, and all other operating costs relevant to the provision of services.
 3. **Special Cost Surveys.** Any special cost surveys conducted by the Department.
 4. **Comprehensive Cost Report (non-State operated Facilities).** All information of the provider including but not limited to those cost components listed in section V.B.8.a-e of Attachment 4.19-D, ICF/MR.
 5. **Representative. Sample.** For non-state-operated providers, a combination of business factors and statistical considerations will be used to determine that the sample fairly reflects the characteristics of the overall population of non-state operated providers. The appropriate sample size will be statistically determined using the following estimated population proportion using the following factors:
 - a. Business factors, such as ensuring that the

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regulations.

2. **Direct service costs.** Direct service costs include costs associated with personnel who provide direct hands-on support for consumers and include personnel such as direct care workers, direct care worker supervisors, QMRP's, Registered Nurses, Licensed Vocational Nurses, and other personnel who provide activities of daily living training and clinical program services. Reporting of direct service costs includes: costs related to wage rates, benefits, contracts for direct services, staffing levels, and direct service supervision information.
3. **Generally Accepted Accounting Principles (GAAP).** Unless otherwise specified, reports should be prepared consistent with generally accepted accounting principles (GAPP) which are those principles approved by the American Institute of Public Accountants (AICPA). Internal Revenue Service (IRS) laws and regulations do not necessarily apply in the preparation of the cost report. The allowability of cost included in cost reports are specified in Section III.B. of Attachment 4.19-D (ICF/MR). The methods outlined in the state plan take precedence for provider cost reporting purposes.
4. **Indirect costs.** Those shared costs which benefit, or contribute to, the operation of providing ICF/MR services, other business components, or the overall entity with which the TDMHMR has a provider agreement. Indirect costs must be allocated, directly or as a pool of costs, across those business components sharing in the benefits of those costs.
5. **Interim rate –** Rate paid to a state-operated facility prior to settlement.
6. **Model-Based Rates.** The model-based rates are the rates for non-state operated providers as determined by the processes outlined in Section V.B. of Attachment 4.19-D (ICF/MR).
7. **Person.** An individual, partnership, corporation, association, governmental subdivision or agency, or a public or private organization of any character.
8. **Provider.** Any entity with whom TDMHMR has a provider agreement.
9. **Provider agreement.** Any written agreement that obligates TDMHMR to pay money to a person for goods or services under the Title XIX Medical Assistance

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- Program.
10. **Rebase.** The revision to the underlying assumptions on which the modeled rates are calculated, including revisions to staffing ratios, pay structure, the composition of direct care staff, or other cost factors used in the formula for modeling the rates.
 11. **State-operated facility.** An ICF/MR for which TDMHMR is the provider.
 12. **Non-state operated facility.** An ICF/MR that is not Under the direct control of TDMHMR. This includes both private providers and providers affiliated with the local public mental health and mental retardation center.
 13. **Related Party.** Two or more individuals or organizations constitute related parties whenever they are affiliated or associated in a manner that entails some degree of legal control or practical influence of one over the other.
 14. **Unallowable costs.** Expensed that are not reasonable Or necessary for the provision of ICF/MR services.

III. Allowable and Unallowable Costs

- A. **General Principles.** Allowable and unallowable costs, both direct and indirect, identify expenses which are reasonable and necessary to provide ICF/MR services and are consistent with federal and state laws and regulations. The primary determinant of allowability is whether or not the cost is consistent with the criteria set forth in GAAP and federal circular OMB A-87, Attachment B. This circular is not comprehensive, and the failure to identify a particular cost does not necessarily mean that the cost is an allowable or unallowable cost.

Specifications for allowable and unallowable costs. The primary criteria of allowability is whether or not the cost meets the definitions as set forth in the federal circular OMB A-87,m Attachment B. Except where specific exceptions are noted, the allowability of all costs is subject to the general principles in circular OMB A-87, Attachment B. The following are exceptions, or elaborations, to circular OMB A-87, Attachment B:

1. **Accounting and audit fees.** Except for Schedule C or Partnership tax returns related to an ICF/MR provider, expenses for preparation of personal tax

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central office overhead expenses, interest income is offset against interest expenses before the allocation of central office costs to individual ICFs/MR.

V. Reimbursement Determination.

TDMHMR reimburses Texas Medicaid ICF/MR providers for services provided to eligible consumers in ICF/MR facilities. HHSC determines reimbursement rates at least annually for two types of facilities: state-operated and non-state operated.

A. **Reimbursement for State-operated Facilities.**

HHSC determines interim reimbursement annually. Interim Rates are uniform statewide by class, and do not vary by level of need. Interim rates are set prospectively with annual settle-up.

1. **Description of rate class.** The state-operated facilities are divided into classes that are determined by the size of the facility.

(a) There is a separate interim rate for each class of state-operated facilities, which are as follows:

- (1) Large facility – A facility with a Medicaid certified capacity of 17 or more as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time, after a rate's effective date, as of the date of the initial certification.
- (2) Small facility – A facility with a Medicaid certified capacity of 16 or less as of the first day of the full month immediately preceding a rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification.

2. **Determination of state-operated facility rates.**

Eligible state-operated facilities are reimbursed an interim rate with a settlement. HHSC will adopt the interim reimbursement rate for state-operated facilities in the following manner:

(a) State-operated facilities will be reimbursed using an interim reimbursement rate and settle-up process.

- (1) Interim per diem reimbursement rates for each class of state-operated facilities are based on the most recent cost report accepted by HHSC adjusted to reflect changes in projected expenditures resulting from changes in economic conditions, occupancy levels, and projected operating budgets.

(2) Settlement is conducted annually on a facility by facility basis. If there is a difference between allowable costs and the reimbursement paid under the interim rate, including applied income, for a state fiscal year, federal funds to the state will be adjusted based on that difference.

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- (b) Since provision is made to ensure that reasonable and necessary costs are covered, state-operated ICF/MR facilities do not qualify for additional supplemental reimbursement for individuals whose needs require a significantly greater than normal amount of care.
- (c) Cost reports from facilities in this class will not be included in the cost arrays that are used to determine reimbursement rates for other classes of providers.

B. Non-state operated facilities.

1. **Classes of facilities.** Classes of non-state operated facilities are based upon facility size. The classes of non-state operated facilities are:
 - (a) Large facility-a facility with a Medicaid certified capacity of fourteen or more beds as of the first day of the full month preceding the rate's effective date or, if certified for the first time after a rate's effective date, as of the date of the initial certification;
 - (b) Medium facility-a facility with a Medicaid certified capacity of nine through thirteen beds as of the first day of the full month preceding the rate's effective date or, if certified for the first time after a rate's effective date, as of the date of initial certification; and
 - (c) Small facility-a facility with a Medicaid certified capacity of eight or fewer beds as of the first day of the full month preceding the rate's effective date or, if certified for the first time after a rate's effective date,

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- as of the date of initial certification.
2. **Rates effective date.** HHSC rates to be effective January 1st of each calendar year unless otherwise specified by HHSC
 3. **Per Diem Rate.** Non-state operated facility rate include payment for a full 24-hours of ICF/MR services except as provided for in V.B.7 of Attachment 4.19-D (ICF/MR) regarding durable medical equipment and page 17 of Attachment 4.19-B (ICF/MR) regarding dental services.
 4. **Levels of need.** Non-state operated per diem reimbursement rates will be differentiated based on consumer level of need and the facility class. The level of need system is a classification system that differentiates rates based on the needs of the individuals served.
 - (a) The level of need classification is based upon The Inventory For Client and Agency Planning (ICAP) service levels. Individuals are classified in the intermittent category if they have an ICAP service level of 7, 8, or 9; individuals are classified at a limited level if they have an ICAP service level of 4,5, or 6; individuals are classified at an extensive level if they have an ICAP service level of 2 or 3; and individuals are classified as pervasive if they have an ICAP service level of 1.
 - (b) For individuals who have extraordinary medical needs or behavioral challenges, there is an opportunity to adjust the level of need to more appropriately reflect level of service needed. Individuals who receive 3 or more hours of nursing service a week are eligible to be moved to the next higher level of need category. An individual cannot move to the next higher level of need category for both a medical and behavior reason. For individuals who have dangerous behaviors that require 1:1 supervision at least 16 hours per day, and special category has been developed, pervasive plus. The levels of need are defined as follows:
 - (1) intermittent-infrequent personal care and /or regular supervision is required to meet the consumer's needs;

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as facility administrator, clerical support and central office staff, management contract fees, professional service fees, contracted administrative staff, general liability insurance, interest expense on working capital, allowable advertising, travel and seminars, dues and subscriptions, office supplies, central office costs and other office expenses.

- (e) Professional consultation expenses including professional contracted services for non-direct care staff (e.g., Medical Director, consulting pharmacists).

9. **Data analysis.** For the initial model based rates, a representative sample determined by an independent consultant was chosen to include providers of different sizes, providers who serve individuals with different level of care needs, and geographic areas of the state. Both public and private non-state operated providers were chosen. Cost, financial, statistical, and operational information was collected during the site visits performed by an independent consultant. These data were collected from cost reports and the service providers' accounting systems. The same process will be used with the rebasing sample. The panel reviews and analyzes the fiscal year 1996 state wage data, the fiscal year 1994 cost data and the fiscal year 1995 sample data from 17 ICF/MR service providers statewide. The base year is calendar year 1997. The rate year is each calendar year thereafter.

- (a) The level of need assessment criteria is used to identify ICF/MR consumers according to the level of resources needed to care for them. HHSC uses the level of need criteria with available cost data to calculate rates by Level of need and facility size (see section V.B.4. of Attachment 4.19-D).
- (b) All non-state operated ICF/MR providers will be required to prepare and submit annual Fiscal Accountability Cost Reports (direct Service wages, Benefits, contract service, and staffing information). The state will use this information to compare direct service cost to direct service reimbursement and to ~~determine~~ if rates need to be rebased

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- (c) At least every four years, a more detailed analysis of current cost and operations information will be preformed for a representative sample of non-state operated providers determined by an independent consultant. This data will plus the fiscal accountability reports will be analyzed by HHSC and reviewed by a panel of experts and the public. Recommendations will be made to HHSC regarding any needed changes to rate factors in the model based on this sample information.
10. **Annual adjustments.** Annual rates for the time period between the years that modeled rates are rebased are set (at January 1) by inflating the previous year's direct cost rates, and other costs inflated as a percentage of direct costs, by the IPD-PCE as defined in Section VI of Attachment 4.19-D (ICF/MR). These rates are uniform by class of facility and client level of need category, determined prospectively, and adjusted annually. There is no cost settlement.
11. **Rebasing the Non-State Operated Modeled Rates.** At least every three years, HHSC will rebase the non-state operated modeled rates using the following process:
- (a) HHSC will seek to obtain an independent consultant to conduct detailed analysis of cost and operational information for a representative sample of ICF/MR providers throughout the state in accordance with Texas Government Code, Chapter 2254, which provides a state agency with the authority to contract with a private consultant. This representative sample will be determined by the independent consultant. Comprehensive cost reports will be completed by all providers in the representative sample. All other providers will complete the direct service cost reports which will be used to ensure costs are covered that must be incurred by an economic and efficient ICF/MR provider.
- (b) Site visits will be made to each of the sample providers to collect cost data and discuss operations.
- (c) An advisory panel consisting of ICF/MR

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providers, advocates, and HHSC personnel will analyze available information regarding historical costs arrayed according to the cost components in V.B.8. of Attachment 4.19-D (ICF/MR), operational data and level of need assessment both from sampled survey and annual fiscal accountability cost reports. HHSC for adjusting the assumptions used in the models or rebasing the rates.

- (d) HHSC will recommend adjustments to rate factors, if required, based on the results of the analysis of the sample of cost and operational information. These adjustments and rate revisions will be completed according to the State Plan.
- (e) Revised rates, as well as the rationale supporting the rates, will be presented to the HHSC Commissioner for final approval and implementation. The implementation of revised rates will be completed according to the State Plan.

C. **Experimental class.** HHSC may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless HHSC and the Centers for Medicare and Medicaid Services (CMS) approve the experimental methodology.

VI. General cost inflation index.

A. Inflation indices.

For non-state operated ICF/MR programs, HHSC uses the Personal Consumption Expenditures (PCE) Chain Type Index as its general cost inflation index. The PCE is a nationally recognized measure of inflation published by the Bureau of Economic Analysis of the U.S. Department of Commerce. To project or inflate costs from the reporting period to the prospective rate period, HHSC uses the lowest feasible PCE forecast consistent with the

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forecasts of nationally recognized sources available to HHSC at the time rates are prepared for public dissemination and comment. Annual increases in fixed capital asset costs to be included in the rate base will be limited to consistent with current Medicaid regulations, the Deficit Reduction Act of 1984 and the Consolidated Omnibus Budget Reconciliation Act of 1985.

- VII. Payment for dental services available to consumers of ICFs/MR. Payments for dental services as described in Item 15b of Appendix 1 to Attachment 3.1-A and Item 15b of Appendix 1 to Attachment 3.1-B for persons 21 years of age and older who reside in an ICF/MR will be based on Texas Health Steps (formerly EPSDT) policies, procedures, limitations and rates, will be obtained through the consumer's Medicaid card.

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